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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/956,950	09/21/2001	Yasuo Toyoshima	0445-0308P	2444

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EXAMINER

LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/956950

Applicant(s)

Toyoshima et al

Examiner

D Loney

Group Art Unit

1772

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 07/21/2003
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-11 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 2-8 is/are allowed.
- ☐ Claim(s) 1, 9, 10 is/are rejected.
- ☐ Claim(s) 11 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

2. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one-year prior to the date of application for patent in the United States.
3. (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
4. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over any of Chien et al, Fahrenkug et al or Schultink et al.

All of the above teach a polymer corrugated layer (i.e pleated) attached to a base layer. The properties recited in claims 2-5 are deemed inherent in the product, absence a showing to the contrary, since the sheets are made of the same materials disclosed by the applicant on page 12 of the specification (i.e. PP, PE, polyester). The obviousness rejection has been included since the examiner cannot determine the extent of inherency. See *In re Fitzgerald*, 619 F.2nd67, 205 USPQ 594 (CCPA 1980).

5. Claims 1 and 10 are rejected under 35 U.S.C. 102 (e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Raidel et al.

Raidel et al teaches a pleated polymer layer attached to a base layer containing spacings as recited in instant claim 6. Refer to Fig. Nos. 14-16 along with column 2, lines 35-39, column 8, lines 1-5, 39-43, 64-67, column 9, lines 47-67, column 11, lines 1-

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7 and column 12, lines 26-28 in Raidel et al. The same issue as above pertains to the claims including specific properties of the invention.

6. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hermanson et al.

Hermanson et al teaches a base sheet (1) wherein a top flexible sheet (3,4, 5 and / or 6) is formed there on. The top flexible sheet contains protrusions in an array both longitudinally and in the width direction of the sheet. Refer to protrusions 8 in Fig. Nos. 3, 4, 5, 6, 7 and 8.

7. Applicant's arguments filed July 21, 2003 have been fully considered but they are not persuasive. The applicant argues that the prior art fails to teach a top sheet for absorbent article, and the functionality of the conforming to wearer's skin, trapping of excrete and separating of the excreta from ones skin.

This is not found persuasive since the prior art all discloses a wavy top layer formed of the same materials the applicant discussion in page 12 of the specification therefore.

8. In response to applicant's argument that of for a absorbent top sheet, containing to ones skin, deformable an trapping of excreta, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a

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manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

9. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 2-8 are allowed.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to D. Loney at telephone number 703-308-2416.

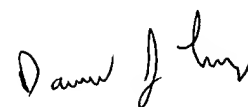
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D. Loney/lap

November 4, 2003

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A handwritten signature in black ink, appearing to read "Donald J. Loney". The signature is written in a cursive, flowing style.

DONALD J. LONEY
PRIMARY EXAMINER